

NA 05-0191-C H/H Litherland v Barnhart
Judge David F. Hamilton

Signed on 8/1/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

DEBORAH S. LITHERLAND,)	
)	
Plaintiff,)	
vs.)	NO. 4:05-cv-00191-DFH-WGH
)	
JO ANNE B.)	
BARNHART, COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

DEBORAH S. LITHERLAND,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 4:05-cv-191-DFH-WGH
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	

ENTRY ON JUDICIAL REVIEW

Plaintiff Deborah S. Litherland seeks judicial review of a decision by the Commissioner of Social Security denying her claim for disability insurance benefits under the Social Security Act. An Administrative Law Judge (ALJ) determined that Ms. Litherland had severe impairments of degenerative disc disease of the lumbar spine with radiculopathy in her left leg, as well as morbid obesity. The ALJ concluded, however, that she was not disabled for purposes of the Social Security Act because she was still capable of performing a full range of unskilled sedentary work. As explained below, the ALJ's decision is supported by substantial evidence and is therefore affirmed.

Background

Ms. Litherland was born in 1953. R. 81. She has a tenth grade education and past work experience as a babysitter and certified nursing assistant. On October 27, 1994, Ms. Litherland saw Dr. Madauss and complained of left leg

pain. R. 154, 171. She reported that she had been hurt on September 15, 1994 when lifting a patient during her job as a nursing assistant. R. 171. Two MRIs revealed a disc herniation at the L4/L5 level of her spine. R. 153-54. Dr. Madauss recommended that Ms. Litherland lose weight and then return. R. 154. Conservative care, including physical therapy, was pursued. R. 132-33, 139-44, 147-51, 154. The conservative care was not successful. Ms. Litherland saw Dr. Madauss again on November 15, 1994, unimproved and still complaining of severe pain. R. 154, 170. He proposed surgery.

On January 5, 1995, Ms. Litherland underwent a complex micro lumbar discectomy at L4/5 on the left. R. 154-60. The surgery was complicated by her morbid obesity. R. 154, 159. On January 19, 1995, Ms. Litherland told Dr. Madauss that her pain was similar to that prior to the surgery. R. 169. During follow-up visits, Ms. Litherland also complained of leg cramps and a numbing sensation into her toes. R. 166, 168. An MRI of the lumbar spine on February 3, 1995 showed probable fibrosis in the left L4-L5 inferior neural foramen and mild generalized central canal stenosis greatest at L4-L5. R. 178.

On April 1, 1996, Ms. Litherland saw Dr. Madauss again. R. 165. She was still having back pain. She also complained of a new problem – neck and left shoulder and arm pain with a tendency to radiate up into the suboccipital region. A set of cervical spine x-rays revealed no gross abnormality. R. 163.

In November 2000, Ms. Litherland complained to her doctors of chronic low abdominal pain. R. 176. A CT scan of the pelvis was negative. An x-ray in December 2000 revealed a normal colon. R. 175. In March 2001, an examination revealed prominent small bowel loops in the upper abdomen. R. 174. Dr. Verhulst noted that these findings might represent partial small bowel obstruction or early ileus. *Id.* X-rays of the abdomen were done in May 2001, and this time, the bowel gas pattern was unremarkable without evidence of obstruction or ileus. R. 173. A CT scan of the abdomen was also negative, but showed minimal sigmoid colonic diverticulosis. R. 172.

On June 8, 2001, an MRI of the lumbar spine revealed recurrent disc protrusion in the left recess at L4/5 causing severe stenosis. R. 177. There were also other post-operative and degenerative changes, including a small amount of enhancing granulation tissue in the right L-4/5 neural recess, L-5/S-1 disc degenerative change without significant canal or foraminal stenosis, and end-plate degenerative marrow signal at L-4/5 and L-5/S-1. *Id.*

On June 21, 2001, Dr. Madauss noted that Ms. Litherland had “a lot” of degenerative change at L4/5. R. 179. Her neurological exam however was “pretty much normal.” He recommended medical management because Ms. Litherland was “too heavy” to undergo elective surgery. Dr. Madauss explained that if she wished to have direct treatment of the disc, he would recommend epidural steroid injections. Ms. Litherland underwent her first injection on July 5, 2001.

However, since this afforded her no relief, a second injection was not recommended.

On September 3, 2002, Ms. Litherland saw Dr. William Faqua. R. 194. She complained of intermittent pain and numbness in her fingers and chronic discomfort in her right shoulder. An MRI was done later that month; Dr. Faqua noted that Ms. Litherland probably had a partial tear of the supraspinatus and that she had degenerative joint disease at the AC joint. R. 193. For her right shoulder, physical therapy was recommended.

In December 2002, Dr. Milem's impression was that Ms. Litherland had a right shoulder rotator cuff tear and right carpal tunnel syndrome. R. 197. Ms. Litherland underwent an operation for these conditions on December 17, 2002. R. 205. The procedure consisted of diagnostic arthroscopy of the right shoulder, arthroscopic subacromial decompression and arthroscopic rotator cuff repair of right, and decompression of median nerve at wrist (release of transverse carpal ligament). *Id.* Ms. Litherland was in a sling and went through physical therapy for several weeks after the surgery. R. 228. In April 2003, she followed-up with Dr. Milem again. R. 236. She told him that her shoulder was doing well, but that she had severe pain in her left hand. Dr. Milem's impression was arthritis of the left thumb. He recommended an injection, which she took that day.

Ms. Litherland fractured her right wrist in October 2003. R. 282. She was placed in a short-arm cast for six weeks. R. 278. In May 2002, she also twisted her left ankle and foot, resulting in pain and soft tissue swelling over the lateral malleolar region. *Id.* An x-ray was done; Dr. Reveno noted that the distal fibula was probably intact, but that he would recommend a repeat mortise projection to be sure. R. 277.

Ms. Litherland first applied for disability benefits on March 22, 2002, more than seven years after her claimed onset date of September 1994. Her claim was denied initially and on reconsideration. On October 9, 2002, Ms. Litherland filed a request for a hearing. The hearing took place on June 10, 2003, and a written decision followed ten days later. See R. 17-24. The ALJ determined that Ms. Litherland had the residual functional capacity to perform a limited range of light work with a sit/stand option and denied her claim for benefits. R. 21.¹ The ALJ's decision was upheld by the Appeals Council on October 21, 2003, leaving it as the final decision of the Commissioner of Social Security. R. 5.

Ms. Litherland sought judicial review in this court. The parties jointly moved to remand so that "the Administrative Law Judge (ALJ) will seek further

¹While the ALJ included the sit/stand option as a part of his residual functional capacity finding in the body of his opinion, he did not do so in the findings at the end of the opinion. Compare R. 21 ("the undersigned finds that . . . the claimant retained the residual functional capacity to perform a limited range of light work with a sit/stand option.") with R. 23 ("The claimant has the residual functional capacity to perform a significant range of light work.").

vocational expert testimony and will further evaluate whether Plaintiff can perform any jobs that exist in significant numbers given her impairments and RFC limitations.” See Pl. Ex. A. Upon remand, the Appeals Council vacated the ALJ’s decision and remanded the case to another ALJ for further proceedings, further elaborating on what the ALJ should do upon remand to obtain further vocational expert testimony. See R. 267-68.

A second hearing on Ms. Litherland’s claim took place on March 28, 2005 in front of a different ALJ. R. 252. The ALJ stated at the hearing that he was treating the case as *de novo* and would hear all of the evidence anew. R. 294. He issued his written opinion on April 26, 2005, R. 252-59, which is the decision under review here.

During the hearing, Ms. Litherland testified that she injured her back at work on September 15, 1994 and had to stop working as a result. R. 301. In addition, Ms. Litherland stated that she thought she could be up and about on her feet for about half an hour before having to sit down due to nagging pain, and could sit down for only about half an hour before her back would become stiff. R. 314-15. She also testified that she could carry ten to twenty pounds, and could do chores for about ten minutes before she would have to stop due to nagging pain in her back. R. 315-16. Ms. Litherland testified that she would have to lie down about three or four times a day. R. 318. She said that she was five feet, five

inches tall and that she weighed about 230 pounds at the time of the hearing. R. 297-98.

The ALJ determined that Ms. Litherland could perform a full range of sedentary work, without a sit/stand option, and concluded that she was not disabled for purposes of the Social Security Act. R. 259. The Appeals Council denied Ms. Litherland's request for review, leaving the ALJ's decision as the final decision of the Commissioner of Social Security. R. 242-45. Ms. Litherland now seeks this court's review of the denial of her application.

The Statutory Framework for Determining Disability

To be eligible for disability insurance benefits, a claimant must establish that she suffers from a disability within the meaning of the Social Security Act. The Act defines "disability" as an inability to engage in substantial gainful activity by reason of a medically determinable impairment that can be expected to cause death or to last for twelve continuous months. 42 U.S.C. § 423(d). Ms. Litherland was disabled if her impairments were of such severity that she was unable to perform work that she previously had done, and if, based on her age, education, and work experience, she could not engage in any other kind of substantial work existing in the national economy. *Id.*

This standard is a stringent one. The Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*,

766 F.2d 284, 285 (7th Cir. 1985). Substantial impairments do not necessarily entitle a claimant to benefits. Before tax dollars – including tax dollars paid by others who work despite serious and painful impairments – are available as disability benefits, it must be clear that the claimant has a severe impairment and cannot perform virtually any kind of work. Under the statutory standard, these benefits are available only as a matter of nearly last resort.

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are as follows:

- (1) Is the claimant engaging in substantial gainful activity? If so, he or she is not disabled.
- (2) If not, does the claimant have an impairment or combination of impairments that are severe? If not, he or she is not disabled.
- (3) If so, does the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant is disabled.
- (4) If not, can the claimant do his or her past relevant work? If so, he or she is not disabled.
- (5) If not, can the claimant perform other work given his or her residual functional capacity, age, education, and experience? If so, then he or she is not disabled. If not, he or she is disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step if the analysis proceeds that far. *Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

Applying the five-step process, the ALJ found that Ms. Litherland met the first step because she had not performed substantial gainful work since the alleged disability onset date. R. 253. The ALJ found that Ms. Litherland also satisfied the second step because she had severe impairments of degenerative disc disease of the lumbar spine with left leg radiculopathy and morbid obesity. R. 255. The ALJ determined that Ms. Litherland's impairments of abdominal pain and diverticulitis were not severe because they did not affect her ability to perform basic work related activities. With regard to right shoulder pain and carpal tunnel syndrome, the ALJ noted that she did not seek treatment for those impairments until September 2002, about a year after her date last insured.

At step three, the ALJ found that Ms. Litherland's impairments, singly or in combination, did not meet or equal the severity of a listed impairment that leads to an automatic finding of disability. *Id.* At step four, the ALJ found that Ms. Litherland had the residual functional capacity to perform "a full range of unskilled sedentary work." R. 256. In so finding, the ALJ did not fully credit Ms. Litherland's testimony regarding her symptoms and functional limitations prior to September 2001. This finding meant that she could no longer do her past work, which was performed at the medium exertional level. Finally, at step five, the ALJ determined that Ms. Litherland could perform some unskilled, sedentary work that existed in significant numbers in the state and national economy; for instance, she could work as a cashier, information clerk, or security monitor. R.

257. Thus, the ALJ concluded that Ms. Litherland was not disabled as defined in the Social Security Act and therefore not entitled to benefits.

Standard of Review

If the Commissioner's decision is both supported by substantial evidence and based on the proper legal criteria, it must be upheld by a reviewing court. 42 U.S.C. § 405(g); *Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005), citing *Scheck v. Barnhart*, 357 F.3d 697, 699 (7th Cir. 2004); *Maggard v. Apfel*, 167 F.3d 376, 379 (7th Cir. 1999). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Diaz v. Chater*, 55 F.3d 300, 305 (7th Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court reviews the record as a whole but does not attempt to substitute its judgment for the ALJ's judgment by reweighing the evidence, resolving material conflicts, or reconsidering the facts or the credibility of the witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994).

The ALJ must examine the evidence that favors the claimant as well as the evidence that supports the claim's rejection. *Zurawski v. Halter*, 245 F.3d 881, 888 (7th Cir. 2001). Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits, the court must defer to the Commissioner's resolution of the conflict. *Binion v. Chater*, 108 F.3d 780, 782

(7th Cir. 1997). A reversal and remand may be required, however, if the ALJ committed an error of law, *Nelson v. Apfel*, 131 F.3d 1228, 1234 (7th Cir. 1997), or based the decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). Also, the ALJ must explain the decision with “enough detail and clarity to permit meaningful appellate review.” *Briscoe*, 425 F.3d at 351.

Discussion

Ms. Litherland argues that the ALJ erred by: (1) failing to comply with the Appeals Council’s order to determine what effect the sit/stand option would have on light jobs; (2) rejecting Ms. Litherland’s testimony as to her pain and functional limitations; and (3) failing to consider evidence showing the extent of the complications caused by her morbid obesity.

I. The Appeals Council’s Order

Ms. Litherland argues that the ALJ failed to comply with the Appeals Council’s order to determine what effect the sit/stand option would have on light jobs. She contends that the second ALJ’s finding – that she had the residual functional capacity to perform a full range of unskilled sedentary work without a sit/stand option – is inconsistent with the Appeals Council’s remand order.

This court's responsibility is not to enforce the Appeals Council's efforts to supervise ALJs. After the ALJ made the decision under review here, the Appeals Council elected not to review it further, a decision indicating that the Appeals Council was not dissatisfied with the ALJ's decision. The issue here is whether the ALJ's decision, which stands as the final decision of the Commissioner of Social Security, complies with the law and is supported by substantial evidence. The ALJ was not required to find that a sit/stand option was needed if the evidence did not support such a finding. Nor does it necessarily follow from the remand order that Ms. Litherland was disabled.

Further, the question posed to the vocational expert by the ALJ included a sit/stand option. R. 324. The vocational expert testified that there was unskilled sedentary work that could be done by a person with Ms. Litherland's education, past work history, and functional limitations as set forth in Exhibit 7F, which was the basis for the ALJ's residual functional capacity finding, see R. 181-88, 256, even with the sit/stand option. R. 325. Thus, a sit/stand option was not needed. In sum, the ALJ did not err by not including a sit/stand option in his findings. Even if he had included a sit/stand option, it would not have changed the outcome.

II. *The ALJ's Credibility Determination*

The ALJ found Ms. Litherland's testimony regarding her symptoms and functional limitations prior to her date last insured in September 2001 were not

fully credible. The ALJ based this determination on several grounds, including his observations of Ms. Litherland during the hearing, her conservative care after her 1995 back surgery,” and his finding that the ALJ’s “rationale in the prior decision, rejecting [Ms. Litherland’s] testimony as to pain and functional limitations, to be viable.” R. 256. Ms. Litherland contends that the ALJ’s credibility determination was erroneous, in light of both the remand order and the objective evidence in the record.

Because hearing officers have the unique opportunity to observe a witness and to evaluate her forthrightness, courts generally afford such officers’ credibility determinations substantial deference. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000). An ALJ’s credibility finding will not be disturbed unless it is “patently wrong.” *Imani v. Heckler*, 797 F.2d 508, 512 (7th Cir. 1986); see also *Diaz*, 55 F.3d at 308. However, where credibility determinations are based on “objective factors or fundamental implausibilities,” a reviewing court has greater freedom to review the ALJ’s decision. *Herron v. Shalala*, 19 F.3d 329, 335 (7th Cir. 1994).

The Commissioner has established regulations pertaining to the proper evaluation of symptoms (*i.e.*, the claimant’s own descriptions of her impairments). The ALJ must consider all of the claimant’s statements about her symptoms, including pain, and must determine the extent to which those symptoms can reasonably be accepted as consistent with the objective medical evidence. 20 C.F.R. § 404.1529. The ALJ can discount subjective complaints that are

inconsistent with the evidence as a whole, but cannot discount complaints merely because they are not supported by objective medical evidence. “The absence of objective medical evidence is just one factor to be considered along with: (a) the claimant’s daily activities; (b) the location, duration, frequency and intensity of the pain; (c) precipitating and aggravating factors; (d) type, dosage, effectiveness and side effects of medication; (e) treatment other than medication; (f) any measures the claimant has used to relieve the pain or other symptoms; and, (g) functional limitations and restrictions.” *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995), citing 20 C.F.R. § 404.1529(c)(3). The ALJ must determine the extent to which the claimant’s symptoms affect her ability to perform work, taking into account the claimant’s statements about the intensity, persistence, and limiting effects of her symptoms. See 20 C.F.R. § 404.1529(c)(4). Social Security Ruling 96-7p offers more specific guidance for assessing the credibility of an individual’s symptoms under the regulations.

In this case, the ALJ’s credibility finding is supported by substantial evidence and is not patently wrong. The ALJ considered several factors in making his credibility finding. First, the ALJ stated that he observed Ms. Litherland during the hearing, “noting she was in no outward distress [And that] She responded appropriately to questions with no indication of distraction due to pain or any other cause.” R. 256. The role of the ALJ’s observations in determining credibility has been “repeatedly endorsed” by the Seventh Circuit and is one of the

primary reasons an ALJ's determination is given substantial deference by a reviewing court. *Powers*, 207 F.3d at 436.

The ALJ considered other factors in addition to his observations of Ms. Litherland. For one, he discussed the medical evidence in the record. R. 254. He later stated that Ms. Litherland's "overall care was highly conservative following her 1995 back surgery," and he addressed more specifically the objective evidence that supported this statement. R. 256. He pointed to treatment notes in 2001 indicating that Ms. Litherland's straight leg raising was negative, muscle groups in the lower extremities were full strength, and her reflexes were 2+/4. See R. 180. The same notes showed that rotation of the hips caused mild discomfort. The ALJ also noted that even though a June 8, 2001 MRI of the lumbar spine ordered by Dr. Madauss showed "recurrent disc protrusion in the left recess at L-4/5 causing severe stenosis," R. 177, Dr. Madauss himself stated that Ms. Litherland's neurological exam was "pretty much normal" just a few days later on June 21, 2001. R. 179. The ALJ went on to point out that Dr. Madauss thought Ms. Litherland was "too heavy" for elective surgery and recommended medical management instead. *Id.* The ALJ stressed the fact that the surgery was "elective" and then mentioned that Dr. Madauss did not see Ms. Litherland again until July 5, 2001 for an epidural injection.

Ms. Litherland contends that this was a "sketchy tangential basis for rejecting the objective evidence" that allegedly supports her complaints of

disabling pain and that the ALJ only selected evidence that favored his ultimate conclusion. Pl. Br. 5. This argument is misguided. The ALJ made note of all of the medical evidence in the record. He then focused on the evidence following her 1995 back surgery and found that, as a whole, it did not support her allegations of disabling pain. The ALJ was not required to provide an in-depth analysis of every piece of evidence, *Diaz*, 55 F.3d at 307-08, and thus did not err when he failed to mention that an epidural injection was a more “direct treatment” than medical management. While Ms. Litherland may be correct in stating that an epidural injection is not “highly conservative” care, this was only one piece of objective evidence in the record discussed by the ALJ. Further, the objective evidence was only one of numerous factors the ALJ considered.

The ALJ also stated: “In the final analysis, I find that [the first ALJ’s] rationale in the previous decision, rejecting [Ms. Litherland’s] testimony as to pain and functional limitations, to be viable.” R. 256. Ms. Litherland contends that this was an error committed by the ALJ given the remand order and objective evidence in the record. As noted above, the issue here is whether the ALJ’s decision is supported by substantial evidence, not whether he complied with the remand order. In fact, the ALJ clearly indicated that he had reviewed, accepted, and adopted the reasoning of the previous ALJ, who had discussed in detail his findings on the credibility of Ms. Litherland’s complaints.

The previous ALJ discussed in his opinion Ms. Litherland's testimony in the first hearing. R. 20. She testified that she could stand for five to ten minutes, walk half of a block, sit for one hour, lift and carry a gallon of milk, bend, push a grocery cart, and lift her arms above shoulder level. R. 20, 48-50. She also testified that she read books and newspapers and could follow the story line. R. 51. The ALJ discussed Ms. Litherland's testimony regarding her daily activities – she testified that she cooked, washed dishes, did other household chores, shopped for groceries, drove daily, and cared for her own personal needs. R. 20, 52-55.

The previous ALJ also discussed Ms. Litherland's medications. He noted that per her testimony and the medications list in the record, see R. 126, she had taken only over-the-counter medications such as Advil and Ibuprofen for her pain since July 2001, "indicating that her pain was only mild during that time." R. 21. The prior ALJ also noted that his residual functional capacity finding was consistent with the opinions of Dr. Madauss, Ms. Litherland's orthopedic surgeon, and the medical consultants. R. 21. He pointed to the fact that Dr. Madauss had placed no restrictions on what Ms. Litherland could do in his June 2001 treatment notes and that the medical consultants had limited her to work at the light exertional level rather than the sedentary level. R. 21, 179, 181-88.

In sum, the ALJ either directly or indirectly, by adopting the previous ALJ's reasoning, considered the medical evidence in the record, Ms. Litherland's pain

medications, the accounts of her daily activities, as well as the opinions of her treating physician and the medical consultants in determining that her allegations of the severity of her symptoms were not fully credible. Thus, the ALJ's conclusion, based on the evidence as a whole, that Ms. Litherland's impairments were not completely disabling, is supported by substantial evidence.

III. *The ALJ's Consideration of Ms. Litherland's Obesity*

Ms. Litherland also argues that the ALJ failed to consider a significant amount of evidence showing the extent of the complications caused by her morbid obesity. Social Security Ruling 02-1p requires an ALJ to consider the effects of obesity at several points in the five-step sequential process. *Skarbek v. Barnhart*, 390 F.3d 500, 504 (7th Cir. 2004). An ALJ however is not required to provide an in-depth analysis of every piece of evidence the claimant provides. *Diaz*, 55 F.3d at 307-08; *Zblewski v. Schweiker*, 732 F.2d 75, 79 (7th Cir. 1984). The question is whether the reasons given by the trier of fact build an accurate and logical bridge between the evidence and the result. *Shramek v. Apfel*, 226 F.3d 809, 811 (7th Cir. 2000). The ALJ is required to account for "all medical evidence that is credible, supported by clinical findings, and relevant to the question at hand." *Nelson*, 131 F.3d at 1237. The ALJ must offer a minimal articulation of his assessment of such medical evidence to show that he considered the evidence the law requires him to consider. *Stephens*, 766 F.2d at 288; cf. *Bates v. Apfel*, 69 F. Supp. 2d 1143, 1150 (N.D. Iowa 1999) (remanding case where ALJ failed to discuss chronic pain syndrome and failed to take into account claimant's pain).

The minimal articulation standard is met when the court can “track the ALJ’s reasoning and be assured that the ALJ considered the important evidence.” *Diaz*, 55 F.3d at 308, quoting *Green v. Shalala*, 51 F.3d 96, 101 (7th Cir. 1995). Cf. *Rohan v. Chater*, 98 F.3d 966, 971 (7th Cir. 1996) (minimal articulation standard not met where court was unable to discern how the ALJ arrived at his findings apart from substituting his own judgment for medical evidence). Finally, a court reviewing the ALJ’s opinion should give it “a commonsensical reading rather than nitpicking at it.” *Shramek*, 226 F.3d at 811, quoting *Johnson v. Apfel*, 189 F.3d 561, 564 (7th Cir. 1999). Remand is appropriate only when the ALJ’s decision is “in a word, unreasoned.” *Groves v. Apfel*, 148 F.3d 809, 811 (7th Cir. 1998).

The ALJ’s decision satisfies the minimal articulation standard with respect to Ms. Litherland’s obesity. The ALJ mentioned in his opinion that Ms. Litherland was “morbidly obese” and that the record indicated that she weighed between 226 ½ and 244 ½ pounds throughout 1994-1996. R. 254. He also noted that she testified to weighing 263 pounds in the first hearing, which at the height of five feet, five inches, indicated a body mass index of 43.8 with obesity defined as having a body mass index of 30 or more. *Id.* The ALJ also included in his findings that Ms. Litherland had a severe impairment of morbid obesity. R. 255.

Most important is the fact that the ALJ’s findings were consistent with the opinions of Ms. Litherland’s doctor and the medical consultants, who were all well

aware of her morbid obesity. No doctor indicated in the record that Ms. Litherland was disabled or unable to work, and no doctor indicated findings in the record that would lead the ALJ to that conclusion. The ALJ based his residual functional capacity finding on Exhibit 7F, which is a residual functional capacity assessment completed by medical consultants Dr. Bianchin and Dr. Sands. See R. 181-88. The medical consultants included as a primary diagnosis back pain and as a secondary diagnosis obesity. They considered Ms. Litherland's obesity when they made their assessment. They also noted that they based their findings in part on Dr. Madauss' June 2001 treatment notes. R. 182. Dr. Madauss was well-aware of Ms. Litherland's obesity and indicated in the same notes that she was "too heavy to undergo elective surgery." See R. 179. Yet, he noted: "Her neurological exam [was] pretty much normal."

Ms. Litherland has not explained how consideration of the complications caused by her morbid obesity would change the outcome of her case. Her post-operative condition is most relevant.² While the ALJ may not have discussed Ms. Litherland's obesity in as much detail as she would have liked, the ALJ made note

²Ms. Litherland alleges that the medical evidence supports a worsening of her condition subsequent to her 1995 back surgery. Pl. Br. 6-7. To support this contention, she relies on an MRI of her lumbar spine that was done about one month after the surgery, a flare-up that allegedly took place in September 1997, Dr. Madauss' June 2001 treatment notes, and the 2001 MRI of the spine. In fact, the record does not indicate that she had a flare-up in 1997. There were notes dated September 1994, one month prior to her back surgery, which might have been misread to say September 1997. See R. 139-40. The other pieces of evidence from 2001 cited by Ms. Litherland were discussed thoroughly by the ALJ, as noted above.

of her obesity several times, indicating that he took it into consideration as he made his findings. See *Skarbek*, 390 F.3d at 504 (refuting claimant's argument that the ALJ's failure to mention his obesity was reason to remand case because this omission was a harmless error).

Conclusion

For the foregoing reasons, the court finds that the ALJ's decision denying benefits is supported by substantial evidence and does not reflect a legal error that would require remand. Accordingly, the ALJ's decision is affirmed. Final judgment will be entered accordingly.

So ordered.

Date: August 1, 2006

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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